

REMARKS

Claims 34, 46-64 and 70 are pending in the application. Claims 46-52, and 58-64 have been amended and new claim 70 has been added. Support for new claim 70 can be found at, *e.g.*, page 9, line 28 to page 10, line 2 of the specification and as filed claims 34 and 35. The Specification has also been amended to correct the Brief Description of the Drawings. No new matter has been added.

Specification

The Examiner has objected to the disclosure, stating that the Brief Description of the Drawings does not identify Figures 1A-1D or 2A-2D. The specification has been amended herein to properly identify these Figures. This objection has been overcome and can be withdrawn.

Claim Allowance

Applicants note with appreciation that the Examiner has indicated that pending claim 34 is allowable.

Claim Rejections

35 U.S.C. § 112, second paragraph

Claims 46-64 have been rejected under 35 U.S.C. § 112, second paragraph as indefinite. According to the Examiner, it is unclear what is intended by the phrase “the nucleotide corresponding to the nucleotide at position 8845 of SEQ ID NO: 2.” (Office action, page 2). As suggested by the Examiner, Applicants have herein amended claim 46 to delete the phrase “the nucleotide corresponding to the nucleotide at.” This rejection has been overcome and can be withdrawn.

35 U.S.C. § 112, first paragraph

Claims 46-64 have been rejected for lack of written description, the Examiner stating that “[t]he claimed genus embraces any variant of SEQ ID NO: 2 that may occur, as long as it comprises an unspecified nucleotide at position 8845 of SEQ ID NO: 2.” (Office action, page 3). As suggested by the Examiner, Applicants have herein amended claims 46-52 and 58-64 to

replace the phrase “which comprises” with the phrase “consisting of.” Accordingly, this rejection has been overcome and can be withdrawn.

35 U.S.C. § 102


Claims 46 and 53 have been rejected as being anticipated by Clark *et al.*, GenBank Accession No. X04500, published June, 1997 (“Clark”). According to the Examiner, Clark teaches a 9721 base sequence that is 100% identical to SEQ ID NO: 2 except for the polymorphism at position 8845, that contains may C residues. As discussed above, claim 46 has been amended herein to require an isolated nucleic acid consisting of between about 100 and 7000 consecutive nucleotides of SEQ ID NO:2, wherein said nucleic acid contains position 8845 of SEQ ID NO:2, which is a C. The Examiner admits that Clark does not teach a C at position 8845 of SEQ ID NO: 2. Therefore, Clark does not anticipate claims 46 or 53, and this rejection can be withdrawn.

Claims 46, 47 and 53 have been rejected as being anticipated by Murray *et al.*, GenBank Accession No. G10509, published August 15, 1995 (“Murray”), although in the Office action at page 5, the Examiner states that the rejected claims are 46 and 47. Claim 46 has been amended herein to require an isolated nucleic acid consisting of between about 100 and 7000 consecutive nucleotides of SEQ ID NO:2, wherein said nucleic acid contains position 8845 of SEQ ID NO:2, which is a C. Murray does not teach a C at position 8845 of SEQ ID NO: 2. Therefore, Murray does not anticipate claims 46 or 53. Claim 47 depends directly from claim 46. As such, it contains all the limitations of claim 46. Since, Applicants have demonstrated that Murray does not anticipate independent claim 46, this reference cannot anticipate dependent claim 47. This rejection can be withdrawn.

CONCLUSION

On the basis of the foregoing amendments, Applicants respectfully submit that the pending claims are in condition for allowance, and a Notice of Allowance is respectfully requested. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

for  P226 NO
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